IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 462 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

MUKESHKUMAR VIJAY CHANDRA

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Appearance:

MR ND GOHIL, ADDL. PUBLIC PROSECUTOR for Petitioner

RULE SERVED for Respondent No. 1

MR BP MUNSHI for Respondent No. 3

MR DK MODI for Respondent No. 11

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CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 09/03/2000

ORAL JUDGEMENT

1. This is a revision application u/s 397 read with section 401 of the Criminal Procedure Code at the instance of the State of Gujarat, challenging the order

passed by the learned Judicial Magistrate First Class, Bhavnagar in Criminal Case No. 5235/96.

2. The respondents - accused were charged to the effect that "Priya" brand iodized salt manufactured, packed and sold on retail [by the different concerned accused] was found to be substandard under the provisions of the Prevention of Food Adulteration Act, 1954 [hereinafter referred to as `the Act'], and that, as per the report of the Public Analyst, Rajkot, dated June 6, 1996, the iodine content [on a dry basis] in the sample was found to be only 3.7 p.p.m. [parts per million], whereas as per standard, it should be at least 15 p.p.m. [parts per million].

However, it appears that the accused were desirous of obtaining the analysis report of the Central Food Laboratory, Calcutta, and accordingly, as per the provisions of section 13[2] of the Act, the sample was sent to the said Laboratory for analysis. The report of the Central Food Laboratory, Calcutta when received by the accused in the Court indicated that the iodine content [on a dry basis] was 18.3 p.p.m. In other words, it was more than the required minimum of 15 p.p.m., and therefore, was not in violation of the requirements of the Act.

3. The accused therefore gave an application to the learned Magistrate [exh.14] for being discharged.

4. After hearing the parties and considering the objections of the prosecution, the learned Magistrate passed an order of discharge.

5. It is this order which is the subject matter of the present revision.

6. There is no dispute that, as per the provision of section 13 sub-section [3], the certificate issued by the Director of the Central Food Laboratory shall supersede the report given by the public analyst. Thus, it would appear that the report of the Central Food Laboratory, which holds that the iodine content of the sample is in accordance with the standards laid down by the Act, supersedes the report of the Public Analyst, Rajkot which holds that that the sample is substandard on account of iodine content.

The next question which arises is whether if the report of the Central Food Laboratory finds a sample to be substandard in other parameters, would it also

supersede the same parameters as contained in the report of the public analyst, and whether on the basis of the report of the Central Food Laboratory, the prosecution or the trial can be continued.

This question was directly answered by a decision of the Division Bench of this Court in Criminal Appeal No.889/80, decided on 18th June 1984 [Coram : D.C.Gheewala and J.P.Desai, JJ] which held that those parameters under which the sample was found to be deficient in the report of the Central Food Laboratory, would justify the continuation of the trial only if those very parameters were the subject matter of the complaint and charge.

7. On the facts of the case, it is established that the Central Food Laboratory has found the sample deficient in terms of (1) minimum content of Sodium Chloride and (2) Water Soluble Contents except Sodium Chloride, neither of these two parameters being the subject matter of the complaint, nor being the subject matter of the charge being faced by the accused. In short, the accused were charged only with production, manufacture and sale of iodized salt, which was alleged to be deficient in its iodine content. According to the report of the Central Food Laboratory, there is no such deficiency. Since the report of the Central Food Laboratory supersedes the report of the public analyst, in the light of the aforesaid Division Bench decision, nothing further can be done in the trial. The learned Magistrate was therefore justified in passing the order of discharge.

8. There is therefore no substance in the present revision and the same is accordingly dismissed. Rule discharged.

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